



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0102]**

**RIN 1625-AA00**

### **Safety Zones; Recurring Events in Captain of the Port Duluth Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard proposes to amend its safety zones regulations for annual events in the Captain of the Port Duluth Zone. This rule would update the locations for seven safety zones, add three new safety zones, increase the safety zone radius of six existing fireworks events, and modify the format of the regulation to list the annual events and corresponding safety zones in table form. These proposed amendments would protect spectators, participants, and vessels from the hazards associated with annual marine events and improve the clarity and readability of the regulation.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0102 using the Federal eRulemaking Portal at <http://www.regulations.gov>. Type the docket number (USCG-2018-0102) in the “SEARCH” box and click “SEARCH.” See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further

instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant John Mack, Chief of Waterways Management, Marine Safety Unit Duluth, U.S. Coast Guard; telephone 218-725-3818, email John.V.Mack@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On May 31, 2013 the Coast Guard published an NPRM in the Federal Register (78 FR 32608) entitled “Recurring Events in the Captain of the Port Duluth Zone.” The NPRM proposed to establish 8 permanent safety zones for annually recurring events in the Captain of the Port Duluth Zone under § 165.943. The NPRM was open for comment for 30 days.

On August 12, 2013 the Coast Guard published the Final Rule in the Federal Register (78 FR 48802), after receiving no comments on the NPRM. Since that time there have been changes to the events that were listed in the Final Rule and additional annual events have been established. Through this proposed rule the Coast Guard seeks to update §165.943 to reflect the current status of recurring marine events in the Captain of the Port Duluth zone.

**III. Discussion of Proposed Rule**

The Coast Guard is proposing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that an amendment to the recurring events list as

published in 33 CFR 165.943 will be necessary to: update the location of seven existing safety zones (Bridgefest Regatta Fireworks Display, Cornucopia 4<sup>th</sup> of July Fireworks Display, Duluth 4<sup>th</sup> Fest Fireworks Display, LaPointe 4<sup>th</sup> of July Fireworks Display, Point to LaPointe Swim, Lake Superior Dragon Boat Festival, and Superior Man Triathlon), add three new safety zones for additional annual events (City of Bayfield 4<sup>th</sup> of July Fireworks Display, Two Harbors 4<sup>th</sup> of July Fireworks Display, and Superior 4<sup>th</sup> of July Fireworks Display), increase the safety zone radius of six fireworks events (Bridgefest Regatta Fireworks Display, Ashland 4<sup>th</sup> of July Fireworks Display, Cornucopia 4<sup>th</sup> of July Fireworks Display, LaPointe 4<sup>th</sup> of July Fireworks Display, and Lake Superior Dragon Boat Festival), and format the existing regulations into a table format. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events and to improve the overall clarity and readability of the rule. The regulatory text we are proposing appears at the end of this document.

The amendments to this proposed rule are necessary to ensure the safety of vessels and people during annual events taking place on or near federally maintained waterways in the Captain of the Port Duluth Zone. Although this proposed rule would be in effect year-round, the specific safety zones listed in Table 165.943 would only be enforced during a specified period of time coinciding with the happening of the annual events listed.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his or her designated representative. The Captain of the Port Duluth or his or her designated representative may be contacted via VHF Channel 16 or telephone at (906) 635-3233. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for each safety zone. Vessel traffic would be able to safely transit around all safety zones which would impact small designated areas within Lake Superior for short durations of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This proposed rule involves:

the update of seven safety zone locations, the addition of three new safety zones, an increase of size for six safety zone radiuses for fireworks related events, and the reformatting of regulations into an easier to read table format. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.943 to read as follows:

§ 165.943 Safety Zones; Recurring Events in Captain of the Port Duluth Zone.

- (a) Regulations. The following regulations apply to the safety zones listed in Table 165.943 of this section:

- (1) The Coast Guard will provide advance notice of the enforcement date and time of the safety zone being enforced in Table 165.943, by issuing a Notice of Enforcement, as well as, a Broadcast Notice to Mariners.



(2) In accordance with the general regulations in §165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or the designated on-scene representative.

(b) Contacting the Captain of the Port. While a safety zone listed in this section is enforced, the Captain of the Port Duluth or his or her on-scene representative may be contacted via VHF Channel 16 or telephone at (906) 635-3233. Vessel operators given permission to enter or operate in a safety zone must comply with all directions given to them by the Captain of the Port Duluth, or his or her on-scene representative.

(c) Exemption. Public vessels, defined as any vessel owned or operated by the United States or by State or local governments, operating in an official capacity are exempted from the requirements of this section.

TABLE 165.943  
[Datum NAD 1983]

Event	Location	Event Date
(1) Bridgefest Regatta Fireworks Display	All waters of the Keweenaw Waterway in Hancock, MI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°07'22"N, 088°35'28"W.	Mid June
(2) Ashland 4th of July Fireworks Display	All waters of Chequamegon Bay in Ashland, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°35'50"N, 090°52'59"W.	On or around July 4th
(3) City of Bayfield 4th of July Fireworks Display	All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48'40"N, 090°48'32"W.	On or around July 4th
(4) Cornucopia 4th of July Fireworks Display	All waters of Siskiwit Bay in Cornucopia, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°51'35"N, 091°06'15"W.	On or around July 4th
(5) Duluth 4th Fest Fireworks Display	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within the arc of a circle	On or around

	with a radius of no more than 1,120 feet from the launch site at position 46°46'14"N, 092°06'16"W.	July 4th
(6) LaPointe 4th of July Fireworks Display	All waters of Lake Superior in LaPointe, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'40"N, 090°47'22"W.	On or around July 4th
(7) Two Harbors 4th of July Fireworks Display	All waters of Agate Bay in Two Harbors, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°00'54"N, 091°40'04"W.	On or around July 4th
(8) Superior 4th of July Fireworks Display	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43'28"N, 092°03'38"W.	On or around July 4th
(9) Point to LaPointe Swim	All waters of the Lake Superior North Channel between Bayfield and LaPointe, WI within an imaginary line created by the following coordinates: 46°48'50"N, 090°48'44"W, moving southeast to 46°46'44"N, 090°47'33"W, then moving northeast to 46°46'52"N, 090°47'17"W, then moving northwest to 46°49'03"N, 090°48'25"W, and finally returning to the starting position.	Early August
(10) Lake Superior Dragon Boat Festival Fireworks Display	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43'28"N, 092°03'47"W.	Late August
(11) Superior Man Triathlon	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within an imaginary line created by the following coordinates: 46°46'36"N, 092°06'06"W, moving southeast to 46°46'32"N, 092°06'01" W, then moving northeast to 46°46'45"N, 092°05'45"W, then moving northwest to 46°46'49"N, 092°05'49"W, and finally returning to the starting position.	Late August

Dated: February 14, 2018.

**E. E. Williams,**

*Commander, U.S. Coast Guard,  
Captain of the Port Duluth.*

BILLING CODE 9110-04-P

[FR Doc. 2018-03624 Filed: 2/21/2018 8:45 am; Publication Date: 2/22/2018]